

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT COURT
MARSHALL DIVISION**

ERIK FLEMING,

Plaintiff,

v.

CHICAGO BRIDGE & IRON
COMPANY (DELAWARE)

Defendant.

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CASE NO. 2:11-CV-194-JRG-RSP

MEMORANDUM ORDER

Currently before the Court is Plaintiff's Motion to Amend (Dkt. 10), filed on May 30, 2011. Plaintiff seeks to amend to allege diversity jurisdiction. Defendant counters that the parties are not diverse, and attaches an affidavit showing that the defendant's "nerve center" is in Texas (the domicile of plaintiff) and thus diversity is lacking under the Supreme Court's recent decision in *Hertz Corporation v. Friend*, 130 S.Ct. 1181 (2010). Plaintiff's proposed Amended Complaint does not allege the "nerve center" or principal place of business of the defendant.

Also before the Court is Defendant's Motion to Dismiss (Dkt. 6) under Rule 12(b)(1) for lack of subject matter jurisdiction. Defendant attaches evidence designed to show that the plans on which plaintiff bases his claims are not covered by ERISA. Plaintiff's response represents that he has not had an adequate opportunity to make discovery on these issues.

The Motion to Amend is DENIED, as the Court finds that plaintiff does not properly allege the facts necessary to support diversity jurisdiction. However, plaintiff will be allowed 60 additional days in which to conduct any discovery relevant to diversity and federal question jurisdiction. Any further motion to amend the Complaint, and any additional opposition to the

Motion to Dismiss shall be filed by **May 30, 2012**. Defendants may file any reply brief in support of their motion by **June 15, 2012**.

The Motion to Dismiss (Dkt. 6) is set for hearing in Open Court before the undersigned on **June 26, 2012 at 9:00 a.m.**

SIGNED this 15th day of March, 2012.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE